In the Supreme Court of the United States

OCTOBER TERM, 1977

LOUIS A. MARKEET AND ROBERT CRAIG, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals affirming petitioners' convictions (Pet. App. 47-58) is not yet reported. The prior opinion of the court of appeals on the legislative privilege issue is reported at 528 F.2d 773, and the opinion on rehearing *en banc* is reported at 537 F.2d 957, certiorari denied *sub nom. Markert* v. *United States*, 429 U.S. 999.

JURISDICTION

The judgment of the court of appeals was entered on March 22, 1978. The petition for a writ of certiorari was filed on April 20, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a state legislator has a privilege in a federal criminal prosecution that precludes the introduction of evidence showing his legislative acts.
2. Whether venue was properly laid in the Northern District of Illinois.

STATEMENT

After a jury trial in the United States District Court for the Northern District of Illinois, petitioners Craig and Markert, members of the Illinois General Assembly, were convicted of conspiracy to commit extortion under color of official right, in violation of 18 U.S.C. 371 and 1951, and of mail fraud, in violation of 18 U.S.C. 1341. Petitioner Craig was sentenced to three years' imprisonment, and petitioner Markert was sentenced to six months' imprisonment. The court of appeals affirmed (Pet. App. 47-58).[1]

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[1] "Pet. App." refers to the joint appendix filed by the petitioners herein and by the petitioners in *North* v. *United States*, No. 77-1499; *Walker* v. *United States*, No. 77-1500; *Pappas* v. *United States*, No. 77-1501; and *Craig* v. *United States*, No. 77-1502.

The evidence at trial is not in dispute and is set out in the opinion of the court of appeals. It showed that co-defendant Thomas Hanahan[2] introduced a bill (House Bill 2025) in the Illinois state legislature in April 1971 intended to amend the Illinois Vehicle Code to require that the title certificates of rental cars disclose that such cars had previously been rented (Pet. App. 48). The effect of passage of the bill would have been to reduce the average resale price of a rental car by $500-600 (*ibid.*). Petitioners used House Bill 2025 to extort $1,500 from a rental vehicle trade association, the Illinois Car and Truck Renting and Leasing Association (CATRALA).

Shortly after House Bill 2025 was introduced, Hanahan and petitioner Craig, who was also a state representative, approached fellow representative Pete Pappas, chairman of the committee having jurisdiction over the bill. Pappas agreed to delay hearings on the bill until Hanahan had time to negotiate with the CATRALA representatives, and the three further agreed to split the proceeds from the bill (*ibid.*; Tr. 695-696).

Doris Steigberg, the lobbyist for CATRALA, followed the progress of the bill. After hearings on the bill had been postponed several times (Tr. 701-702), she spoke with Craig on June 30, 1971, the last day of the spring session of the legislature. In response to her question about the status of the bill, Craig said that it could be stopped for $5,000 (Pet. App.

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[2] Hanahan was acquitted at trial.

48; Tr. 190-191). Steigberg protested that the organization was having difficulty paying her salary; Craig nonetheless suggested that she see what the organization could afford (Pet. App. 48-49). Steigberg immediately telephoned Frank LoNano, the CATRALA president, and told him of the demand for money. She later explained the potential effect of the bill to the CATRALA board and told the board members that she had been approached for money on the bill (Pet. App. 49; Tr. 191-194).

A hearing was scheduled on House Bill 2025 shortly after the legislature reconvened in October 1971. A day or so before the committee hearing, Steigberg told Craig that $5,000 was too much. When she asked for the lowest amount that would be acceptable, Craig told her to try for $2,000 (Pet. App. 49; Tr. 199-200). Steigberg then spoke with LoNano, and on the day of the committee hearing she told petitioner Markert, who engaged in the negotiation along with petitioner Craig, that $2,000 was still too high; she asked him if he could try to lower the amount to $1,500 (Pet. App. 49; Tr. 201-202). Markert later told Steigberg that they would accept $1,500, although they were unhappy about it (*ibid.*). In early November 1971, Markert asked Steigberg if she had heard any more about the money; she assured him that it would be paid (Tr. 205-206).

On November 12, 1971, Steigberg telephoned Lee Workman, the Assistant Vice President and Chicago Zone Manager for Hertz Corporation, whose office was in Des Plaines, Illinois. Steigberg told Workman

that the financial burden of the $5,000 demand would have to be shared among the four largest CATRALA members and that Hertz's share would be $1,500 (Pet. App. 49-50). Workman complied and sent her a check for $1,500, with a cover letter indicating that the check was to be used to block the Illinois title law. Steigberg destroyed her copy of the cover letter and directed Workman to do likewise (Pet. App. 50). Thereafter, Steigberg cashed the check, placed the money in an envelope, and proceeded to Craig's office. Craig was not there, but his secretary said she would be flying to Craig's home to take other materials and she would also deliver the envelope. Some time later Pappas telephoned Craig and asked about the money for the bill. Craig told him that it had been received; he then mailed Pappas his share, some $600. House Bill 2025 was later tabled during the spring session of the legislature (*ibid.*).

ARGUMENT

1. Petitioners contend (Pet. 14-24) that as state legislators they were immune from indictment because they were entitled to the benefit of a federal common-law evidentiary privilege precluding the introduction at trial of evidence of their legislative actions.[3]

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[3] Prior to trial, the district court suppressed evidence relating to petitioners' legislative acts (Pet. App. 10-20). On appeal from this ruling, the majority of the panel held that a legislative privilege existed but that petitioner Markert had waived it; Judge Tone, concurring, opined that no privilege

While there is considered dictum in *In Re Grand Jury Proceedings*, 563 F.2d 577 (C.A. 3), looking the other way, we believe that there is no federal common law privilege banning the proof at trial of legislative activities of state legislators who are indicted for violations of federal law. The same legislative privilege claim was recently raised in *DiCarlo* v. *United States*, No. 77-990, and this Court denied certiorari on March 20, 1978. We rely on the analysis contained in our Brief in Opposition in *DiCarlo*, as well as the analysis contained in our Brief in Opposition to the prior petition for certiorari in the instant case, *Markert* v. *United States*, No. 76-179, certiorari denied, 429 U.S. 999. Copies of our briefs in those cases are being forwarded to counsel for petitioners herein.[4]

2. Petitioners also contend (Pet. 24-27) that venue on the indictment for conspiracy to commit extortion in violation of the Hobbs Act, 18 U.S.C. 1951, did not lie in the Northern District of Illinois.

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should be recognized. *United States* v. *Craig*, 528 F.2d 773 (C.A. 7). On rehearing *en banc*, the court adopted Judge Tone's concurring opinion, 537 F.2d 957, certiorari denied *sub nom. Markert* v. *United States*, 429 U.S. 999.

[4] There is no merit to petitioners' claim (Pet. 23-24) that the recognition of common law "official immunity" in civil cases only is contrary to Rule 501, Fed. R. Evid. Rule 501 itself recognizes that privileges may be broader in civil cases than in criminal, and it leaves the determination of a privilege, where it relates to a claim of substance rather than procedure, to state law. Moreover, the reasons for the doctrine of "official immunity" do not call for immunity from criminal prosecution, as we point out in our Brief in Opposition in *DiCarlo*.

The court below properly held that although the conspiracy agreement was formed outside the Northern District of Illinois and no conspirator directly and personally performed an overt act in furtherance of the conspiracy in that district, venue nonetheless was properly laid there (Pet. App. 52-53). Acts of third parties (here, the victims of the extortion), if caused by the conspirators and in furtherance of their scheme, constitute overt acts in furtherance of the conspiracy. *United States* v. *Johnson*, 165 F.2d 42 (C.A. 3), certiorari denied, 332 U.S. 852. In this case, it is undisputed that the $1500 check from Hertz was drawn on a Hertz bank account in Chicago (Pet. 11-12; Pet. App. 50). Thus, the funds subject to extortion were taken from the Northern District of Illinois, and it was the wrongful conduct of petitioners that caused the victims of the extortionate scheme to render payment in that District. Under 18 U.S.C. 3237 (a), the offense was "continued" or "completed" in the Northern District of Illinois, even though it may have "begun" elsewhere. See also *United States* v. *Candella*, 487 F.2d 1223, 1228 (C.A. 2), certiorari denied, 415 U.S. 977, pointing out that venue is properly laid in " 'the whole area through which force propelled by an offender operates,' " and that venue is appropriate in any district "where the decision was reached to make the funds available" as a result of the illegal scheme.

In addition, as the court of appeals pointed out, venue was properly laid in the Northern District of Illinois because commerce was affected in that district.

The payment of $1500 from the bank account in the Northern District of Illinois was sufficient to establish that commerce had been affected there.[5] See *United States* v. *DeMet*, 486 F.2d 816, 821-822 (C.A. 7), certiorari denied, 416 U.S. 969; *United States* v. *Addonizio*, 451 F.2d 49, 60 (C.A. 3), certiorari denied, 405 U.S. 936; *United States* v. *Tropiano*, 418 F.2d 1069, 1076 (C.A. 2), certiorari denied, 397 U.S. 1021. Because venue is proper in any district where commerce directly is affected, *United States* v. *Floyd*, 228 F.2d 913, 918 (C.A. 7), certiorari denied, 351 U.S. 938, and an effect on commerce in the Northern District was shown, venue clearly lay in that district.[6] Petitioners have cited no authority inconsistent with the well-settled principles relied upon by the court below, and their venue contentions merit no further review.

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[5] As the court below properly pointed out (Pet. App. 53), extortion becomes a federal offense in violation of the Hobbs Act where it interferes with interstate commerce "in any way or degree." 18 U.S.C. 1951(a); *Stirone* v. *United States*, 361 U.S. 212, 215.

[6] Because, moreover, the Hobbs Act count was joined with a mail-fraud count based on the same conduct, and concurrent sentences were imposed, any purported error was harmless. Venue under the mail fraud statute, 18 U.S.C. 1341, is proper wherever a mailing originates or is received. *United States* v. *McGregor*, 503 F.2d 1167, 1170 (C.A. 8), certiorari denied, 420 U.S. 926; *United States* v. *Sorce*, 308 F.2d 299, 300 (C.A. 4), certiorari denied, 377 U.S. 957; see also *United States* v. *Joyce*, 499 F.2d 9, 16 (C.A. 7), certiorari denied, 419 U.S. 1031. Since the Hertz check was deposited in the mail in the Northern District of Illinois, venue on the mail fraud charge was properly established there, and the sentences here involved are sustainable on that ground alone.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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